



Signed and Filed: April 22, 2022

Dennis Montali

DENNIS MONTALI
U.S. Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA

In re:) Bankruptcy Case
PG&E CORPORATION,) No. 19-30088-DM
- and -) Chapter 11
PACIFIC GAS AND ELECTRIC) Jointly Administered
COMPANY,)
Reorganized Debtors.) Date: September 6, 7 and 8,
2022
Time: 9:00 AM
Via Zoom Video
☐ Affects PG&E Corporation)
☐ Affects Pacific Gas and)
Electric Company)
☒ Affects both Debtors)
* All papers shall be filed in)
the Lead Case, No. 19-30088)
(DM) .)

SCHEDULING ORDER FOR REMOTE TRIAL

On April 12, 2022, the court held a scheduling conference on the *Motion for Relief from Plan Injunction, to Compel Arbitration and/or for Abstention* filed by Fulcrum Credit Partners LLC and Tuscan Ridge Associates, LLC (collectively as "Claimants") (Dkt. No. 11066), and *Reorganized Debtors'*

1 *Objection to Proof of Claim No. 58562 Filed by Fulcrum Credit*
2 *Partners LLC as Transferee of Tuscan Ridge Associates, LLC* (Dkt.
3 No. 11288). Jane Kim and Laura L. Goodman appeared for the
4 Reorganized Debtors. Diane C. Stanfield appeared for Fulcrum
5 Credit Partners LLC. Jamie P. Dreher appeared for Tuscan Ridge
6 Associates, LLC.

7 Upon due consideration, the court hereby enters the
8 following scheduling order.

9 **TRIAL.** The trial or hearing ("Trial") on the above
10 matter(s) will commence on the Date and Time of Trial, set forth
11 below and to be held via Zoom Video. Other relevant dates are
12 also shown below. During the week prior to the Trial, the court
13 may move the starting time or day. The court's Calendar
14 Clerk/Courtroom Deputy will advise the parties of any such
15 change by telephone or e-mail. **All parties are cautioned to be**
16 **prepared to adjust their schedules accordingly.**

17 The court is closed to an in-person trial as a result of
18 the dangers presented by the COVID-19 pandemic. In accordance
19 with Federal Rule of Civil Procedure 43(a), made applicable here
20 by Federal Rule of Bankruptcy Procedure 9017, for good cause in
21 compelling circumstances and with appropriate safeguards, the
22 court may permit testimony by contemporaneous transmission from
23 a location other than the courtroom. The court finds that the
24 public danger presented by the COVID-19 pandemic merits
25 application of this rule as to all witnesses who may remotely
26 testify at the Trial, through the use of video conferencing
27 technology.

1 Further, the court finds that these procedures will provide
2 adequate safeguards for purposes of Federal Rule 43(a) and
3 ensure due process of law. These procedures will (i) enable the
4 court to identify, communicate with, and judge the demeanor of
5 all witnesses in real time, (ii) enable counsel for the parties
6 to see and hear the witness testimony, interpose objections, and
7 communicate with the court in real time, (iii) enable the
8 parties, the witnesses and the court to have simultaneous access
9 to an identical set of pre-marked exhibits, (iv) avoid any undue
10 influence or interference with the witnesses in connection with
11 their testimony, and (v) preserve the ability of any witness to
12 be represented by counsel during the proceeding, and to
13 communicate with such counsel as the court deems appropriate.

14 Participants in the Trial will be connected with the
15 courtroom but will not be physically present. The court staff
16 will provide a link or URL (internet address) to the persons
17 identified by the parties.

18 Each participating attorney and each witness must have
19 simultaneous access to a computer, equipped with a camera, that
20 is capable of receiving and transmitting audio and video, or a
21 tablet or smart phone, that satisfy the following requirements:
22 (1) Internet browsing software that is adequate to facilitate
23 the court's video hearing provider, (2) an Internet connection
24 with bandwidth adequate to support the individual's use of the
25 video hearing provider, and (3) Adobe Acrobat Reader for
26 purposes of reviewing exhibits, as directed by counsel or the
27 court. The device must have sufficient video and audio
28 capabilities to allow the speaker to hear and be heard by other

1 participants on a consistent basis. Further, the attorney or
2 witness using it must be situated in a location with wi-fi,
3 cellular, or other service adequate to provide clear audio and
4 video.

5 No later than **August 29, 2022**, the parties shall provide to
6 the courtroom deputy (Ms. Lorena Parada,
7 Lorena_Parada@canb.uscourts.gov, 415-268-2323), and to each
8 other, a list of all attorneys and witnesses who will
9 participate in the Trial (other than those witnesses intended
10 for impeachment or rebuttal), together with an email address and
11 telephone number for each. The telephone number provided should
12 be a number at which the attorney or witness can be reached
13 during the Trial in the event of an interruption of the video or
14 audio feed. This requirement is in addition to any requirements
15 previously or subsequently established by the court for the
16 parties to disclose to each other, by a date certain, the
17 identity of the witnesses they intend to present at trial.

18 **MOTIONS**. All dispositive motions must be filed by the date
19 set forth below.

20 **DISCOVERY**. Fact discovery shall be completed by the Fact
21 Discovery Deadline shown below. Completion means that
22 depositions must be concluded, although not necessarily
23 transcribed. As to written and production discovery, responses
24 must be due before the Fact Discovery Deadline. The court will
25 attempt to resolve all discovery disputes on an expedited basis
26 via telephonic conference, which any party may initiate by
27 request to Ms. Parada, and notice to the other party after they
28 have met and conferred and made a good faith effort to resolve

1 the dispute. The party requesting the conference should submit
2 a brief letter or e-mail to Ms. Parada explaining the issues to
3 be presented; the other party may submit a brief letter or e-
4 mail in the same manner.

5 The Fact Discovery Deadline may be extended by the parties
6 by agreement, without an order of the court.

7 **EVIDENCE**. Declarations of non-expert witnesses will not be
8 considered except by stipulation of the parties or prior court
9 approval.

10 **PRE-TRIAL SUBMISSIONS**. Not later than 7 calendar days
11 before the Date and Time of Trial, each party shall:

12 (a) File and serve copies of a trial brief, which shall
13 include a summary of the facts to be proven and the legal
14 theories on which the party relies. Briefs shall not exceed 15
15 pages without prior permission of the court. The court will not
16 normally request or permit post-trial briefs.

17 (b) File and serve a witness list, including a brief
18 summary of the anticipated testimony from each witness. If a
19 party to the matter will be called as a witness (even as an
20 adverse witness) that party's name must be included on the
21 witness list. The presence of a witness' name on the witness
22 list is to alert the court and the other side that the witness
23 may be called. It does not mean that that person will be
24 called. Accordingly, each party is responsible for ensuring the
25 attendance of every witness the party intends to call, whether
26 or not named by the other side. Except in exceptional
27 circumstances, absent consent by the other side, a party will
28 not be allowed to call a witness not named on that party's

1 witness list. This subparagraph shall not apply to impeachment,
2 rebuttal or expert witnesses or their testimony.

3 (c) File and serve a list of exhibits the party intends to
4 introduce into evidence (other than those to be used for
5 impeachment or rebuttal). Exhibits that are already on the
6 court's docket do not need to be served but must be listed by
7 docket number and a brief description. Copies of all exhibits
8 not already of the docket must be produced as separately titled
9 pdf files, identifying each exhibit by exhibit number or letter
10 and a brief description. Lengthy exhibits should be bookmarked
11 in order to allow counsel, witness and the court to readily
12 access the relevant portion(s) of the exhibit.

13 Those exhibits shall also be emailed to
14 Montali.Orders@canb.uscourts.gov.

15 Upon receipt of the electronic documents, each attorney and
16 witness shall take the steps necessary to ensure that all
17 electronic documents can be successfully opened and are readily
18 available during the Trial.

19 Exhibits to be used solely for rebuttal or impeachment
20 shall be encrypted in pdf format with a simple user-friendly
21 password. They will be emailed to counsel, the parties, the
22 courtroom deputy only and identified and marked as such when
23 directed by the court.

24 (d) Reorganized Debtors' exhibits should be marked by
25 number and Claimants' exhibits should be marked by letter.

26 **CONDUCT OF TRIAL VIA VIDEO. Any witness called to testify**
27 **at the Trial shall testify by contemporaneous transmission from**
28

1 a different location into the video courtroom (each a "Remote
2 Witness").

3 (a) Each Remote Witness shall be placed under oath and
4 their testimony shall have the same effect and be binding upon
5 the Remote Witness in the same manner as if such Remote Witness
6 were sworn and testified in open court.

7 (b) Each Remote Witness shall provide their testimony from
8 a quiet room and must situate themselves in such a manner as to
9 be able to both view the video and be seen by the Court.

10 (c) While the Remote Witness is sworn and testifying: (i)
11 no person may be present in the room from which the Remote
12 Witness is testifying, (ii) the Remote Witness may not have in
13 the room any documents except the exhibits submitted by the
14 parties pursuant to this order and any declaration submitted in
15 lieu of direct testimony, and (iii) may not communicate with any
16 other person regarding the subject of their testimony, by
17 electronic means or otherwise. If the witness or their counsel
18 seek to communicate with one another, either shall openly
19 request a recess for such purpose. If such request is granted
20 by the Court, the witness and their counsel may privately
21 confer "offline," i.e., by telephonic means that are not
22 transmitted to the other parties.

23 (d) Remote Witnesses who are testifying as experts must
24 provide advance direct testimony by declaration submitted by the
25 parties pursuant to this order. Remote Witnesses shall be
26 available for cross examination. Failure of a Remote Witness to
27 be available for cross examination may result in striking of the
28 Remote Witness's declaration.

1 **EXPERTS.** The presentation of expert testimony at Trial
2 shall be governed by the following:

3 (a) Direct evidence shall be presented by a declaration
4 that authenticates the report of the expert. See FRCP
5 26(a)(2)(B), incorporated via Fed. R. Bankr. P. 7026. Each
6 party shall file and serve declarations of experts and other
7 documentary evidence related thereto no later than the Expert
8 Disclosure and Reports Deadline set forth below.

9 (b) To cross-examine an opposing party's expert declarant,
10 a party shall notify the opposing party in writing or by e-mail
11 at least **3 court** days before the Date and Time of Trial, in
12 which case the declarant will be required to be available to
13 appear at Trial via Zoom. Any party who fails to notify the
14 opposing party will not be permitted to cross-examine the
15 opposing party's expert. Any party who requests the right to
16 cross-examine an expert and then does not do so will be expected
17 to reimburse the opposing party no less than the expenses
18 incurred in producing the expert at the Trial.

19 If either party anticipates the use of rebuttal expert
20 testimony, such rebuttal expert disclosures and reports shall be
21 submitted by the date set forth below.

22 **PRE-TRIAL OBJECTIONS.** Promptly after receipt of the items
23 mentioned in **PRE-TRIAL SUBMISSIONS**, above, each party must
24 advise the opposing party of any objections to the introduction
25 of testimony or exhibits. Parties must meet and confer before
26 Trial to attempt to reach agreement regarding admissibility.
27 The court expects the parties to make good faith efforts to
28 resolve all evidentiary issues.

1 **MOTIONS IN LIMINE**. If efforts to resolve disputes regarding
2 the introduction of testimony or exhibits are unsuccessful,
3 motions in limine should be filed and served no later than **4**
4 **court** days before the Date and Time of Trial. Such motions
5 should include a certification that the moving party has
6 complied in good faith with the meet and confer requirements of
7 the preceding paragraph. Opposition should be filed and served
8 no later than **1 court** day before the Date and Time of Trial.
9 Motions in limine will be heard at the commencement of Trial.

10 Notwithstanding the foregoing, if a party intends by a
11 motion in limine to exclude an expert or the expert's report,
12 that party should set the motion on the court's regular law and
13 motion calendar, to be heard at least **7** calendar days before the
14 Date and Time of Trial.

15 **STIPULATIONS**. At the commencement of Trial, the parties
16 must be prepared to stipulate into evidence all exhibits that
17 are admissible for at least one purpose. Bona-fide objections
18 may be reserved, with the issue of admissibility deferred until
19 the exhibit is offered into evidence.

20 **ORDER OF PRESENTATION AT TRIAL**. Unless otherwise agreed by
21 the parties or ordered by the court, the Claimants will present
22 their cases-in-chief first.

23 **IMPEACHMENT AND REBUTTAL WITNESSES**. The requirement of
24 advance identification of witnesses and production of exhibits
25 does not apply to witnesses and exhibits presented for purposes
26 of impeachment or rebuttal.¹ This paragraph supersedes the

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28 ¹ The proper function of rebuttal evidence is to contradict,
impeach or defuse the impact of the evidence offered by an

expert disclosure procedure of FRCP 26(a)(2)(D)(ii),
incorporated via Fed. R. Bankr. P. 7026.

DEMONSTRATIVE EVIDENCE. The court does not want charts,
power point presentations, whiteboards, or similar large display
items to be used during trial. Parties desiring to summarize,
reproduce or display evidence may use the "Share Screen" feature
in Zoom, subject to the court's permission. Any exceptions to
this policy should be requested well in advance of trial.

NOTICE TO COURT. No later than the Monday of the week prior
to the Date and Time of Trial, counsel for the Reorganized
Debtors **must** telephone or e-mail the court's Calendar
Clerk/Courtroom Deputy, Ms. Lorena Parada (415-268-2323;
Lorena_Parada@canb.uscourts.gov) and report: whether the parties
intend to go forward with the Trial as scheduled; if settlement
is likely; whether the time reserved for the Trial is realistic;
and any other relevant information.

NON-COMPLIANCE. Any failure of a party to comply timely
with this scheduling order may result in judgment against such
party, removal of the Trial from calendar, exclusion of evidence
or imposition of monetary or non-monetary sanctions. See FRCP
16(f)(1)(C), incorporated via Fed. R. Bankr. P. 7016.

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adverse party. Testimony offered only as additional support to
an argument made in a case in chief is improper on rebuttal.
Peals v Terre Haute Police Dept., 535 F.3d 621, 630 (7th Cir.
2008); see also Daly v. Far Eastern Shipping Co., 238 F.Supp.2d
1231, 1238 (W.D. Wash. 2003), aff'd 108 Fed. Appx. 476 (9th Cir.
2004).

DATE AND TIME OF TRIAL: September 6, 7 and 8, 2022, at
9:00 AM

TIME RESERVED FOR TRIAL: Three days

**LAST DAY FOR CLAIMANTS TO SERVE AMENDED WRITTEN DISCOVERY
RESPONSES:** April 22, 2022

LAST DAY FOR PARTIES TO PRODUCE DOCUMENTS: May 2, 2022

LAST DAY FOR PARTIES TO PRODUCE PRIVILEGE LOGS: May 9,
2022

FURTHER SCHEDULING CONFERENCE: May 10, 2022, at 10:00 AM

LAST DAY TO COMPLETE FACT DISCOVERY: July 22, 2022

EXPERT DISCLOSURES WITH REPORTS: August 1, 2022

LAST DAY TO FILE DISPOSITIVE MOTIONS: August 2, 2022

REBUTTAL EXPERT DISCLOSURES: August 15, 2022

LAST DAY TO COMPLETE EXPERT DEPOSITIONS: August 22, 2022

PRE-TRIAL STATUS CONFERENCE: The court will conduct a pre-trial status conference on August 23, 2022, at 10:00 AM via Zoom. In addition to normal business, counsel and the court will test the adequacy of all parties' audio and video connections and other matters related to the conduct of the remote trial. The court expects counsel to take similar steps prior to trial (but without court involvement) to assure proper connections with their respective clients and witnesses.

OTHER PROVISIONS: Although conducted using video conferencing technology, the Trial constitutes a court proceeding. No person shall record, from any location or by any means, the audio or video of the Trial. The audio recording created and maintained by the court shall constitute the official record of the Trial. Further, the formalities of a

1 courtroom shall be observed. Counsel and witnesses shall dress
2 appropriately, exercise civility, and otherwise conduct
3 themselves in a manner consistent with the dignity of the court
4 and its proceedings.

5 **END OF ORDER**
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COURT SERVICE LIST

ECF Recipients